

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) Case No. 02-05025-01-CR-SW-GAF
)
 THOMAS SMITH,)
)
 Defendant.)

Now pending before the Court is defendant's Motion to Dismiss Count IV (Doc. 346), Motion to Dismiss Count IV as it is Duplicious [sic] (Doc. 347), and Motion to Dismiss Counts VI and VII as they were based on perjury and misleading testimony (Doc. 403).

Upon careful and independent review of the pending motions, as well as the applicable law, this Court hereby adopts and incorporates as its own Opinion and Order the Report and Recommendation of United States Magistrate Judge James C. England.

SO ORDERED.

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DATED: January 9, 2006